

Department of State Health Services
Agenda Item for State Health Services Council
November 17, 2005

Agenda Item Title: Amend 25 TAC Chapter 141 relating to the regulation of massage therapists.
Agenda Number: 3c

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background: Revisions to the rules are necessary to implement provisions of House Bill 2696, 79th Legislature, Regular Session (2005), relating to the regulation of massage therapy. The bill specifically changes the massage therapy registration to a license. The Massage Therapy Program is a regulatory program that issues and renews massage therapists, massage therapy establishments, massage therapy education programs, massage therapy instructors, and approved continuing education providers. The program also administers examinations, through a contracted agency, to determine the eligibility and competency of massage therapists in Texas in order to protect and promote public health, safety, and welfare. Examination fees, including an administrative fee, are collected by the contracted agency that is approved by the department. Examination review fees, which are collected by the department, are being modified to eliminate the in-person review of written examination questions. In the future, written examination review will consist of providing a written analysis of performance, which will not require a fee.

Summary: The proposed amendments are necessary to implement House Bill 2696, 79th Legislature, Regular Session, which amended Occupations Code, Chapter 455, to provide for an increased level of regulation of the practice of massage therapy. HB 2696 changed the term for massage therapy regulation from "registered" to "licensed"; deleted the department's authority to issue temporary registrations; added language regarding criminal convictions and eligibility for licensure; and modified other administrative aspects of the licensing program. The proposed amendments also clarify the number of apprenticeship hours that a student may obtain before being required to become licensed, implement late renewal fees for massage therapy educational programs who fail to renew timely, and eliminate the written examination review and associated fees.

Summary of Stakeholder Input to Date (including advisory committees):

Stakeholder input has been solicited through verbal and written communication with stakeholders and through the massage therapy program web site.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # 3c.

Agenda Item Approved by: Rick Bays

Presented by: Debbie Peterson **Title:** Unit Manager

Program/Division: PLC **Contact Name/Phone:** Heather Muehr 512/834-6770x6768

**Date
Submitted**

11/02/2005

Title 25. HEALTH SERVICES

Part 1. DEPARTMENT OF STATE HEALTH SERVICES

Chapter 141. Massage Therapy

Subchapter A. The Department.

Amendments §§141.1-141.3

Subchapter B. Code of Ethics.

Amendments §§141.5-141.7

Subchapter C. Massage Therapists.

Amendments §§141.10, 141.11 and 141.13-141.17

Subchapter D. Continuing Education Requirements and Documentation.

Amendments §§141.20, 141.21, 141.24 and 141.25

Subchapter E. Massage Schools and Massage Therapy Instructors.

Amendments §§141.26, 141.27, 141.29-141.34, 141.36, 141.37 and 141.40

Subchapter F. Massage Establishments.

Amendments §§141.50, 141.51, and 141.53-141.55

Subchapter G. Complaints, Violations and Subsequent Disciplinary Actions.

Amendments §§141.60-141.62 and 141.64-141.66

Repeal §141.12

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission and on behalf of the Department of State Health Services (department) proposes amendments to §§141.1-141.3, 141.5-141.7, 141.10, 141.11, 141.13-141.17, 141.20, 141.21, 141.24-141.27, 141.29-141.34, 141.36, 141.37, 141.40, 141.50, 141.51, 141.53-141.55, 141.60-141.62, and 141.64-141.66 and the repeal of §141.12, concerning the regulation of massage therapy.

BACKGROUND AND PURPOSE

Revisions to the rules are necessary to implement provisions of House Bill 2696, 79th Legislature, Regular Session (2005), relating to the regulation of massage therapy. The bill specifically changes the massage therapy registration to a license. The Massage Therapy Program is a regulatory program that issues and renews massage therapists, massage therapy establishments, massage therapy education programs, massage therapy instructors, and approved continuing education providers. The program also administers examinations, through a contracted agency, to determine the eligibility and competency of massage therapists in Texas in order to protect and promote public health, safety, and welfare. Examination fees, including an administrative fee, are collected by the contracted agency that is approved by the department. Examination review fees, which are collected by the department, are being modified to eliminate the in-person review of written examination questions. In the future, written examination review will consist of providing a written analysis of performance, which will not require a fee.

SECTION-BY-SECTION SUMMARY

Amendments to §§141.1, 141.2, 141.3, 141.5, 141.6, 141.7, 141.10, 141.11, 141.13-141.17, 141.20, 141.21, 141.25-141.27, 141.29-141.33, 141.36, 141.37, 141.40, 141.50, 141.51, 141.53 -

141.55, 141.60-141.62, and 141.64-141.66 reflect changes to Texas Occupations Code, Chapter 455 due to recent legislation. The changes are necessary in order to change the terms “registration, registered, certificate of registration, and registrant” to “license, licensed, and licensee.”

Amendments to §141.1 add a definition for the commissioner of the Department of State Health Services (department), reflect the change in agency name, include the use of lubricants, jacuzzi, sauna, and steam baths in the definition of massage therapy. New §141.1(10) adds a definition for licensee. This section has been renumbered to reflect deletions and insertions.

Amendments to §141.2 reflect change in agency name, remove language regarding application fees for a one-year license due to House Bill 2292, 78th Legislature, Regular Session (2003), and remove language regarding fees for the written examination review. New language §142.2(e)(4)(A) and (B) will require massage therapy educational programs to pay late renewal fees to align the fee structure with standard licensing agency practices.

Amendments to §141.3 delete the reference to the temporary registration, and changes “letter of approval for examination” to “notice of approval for examination” to allow for electronic notification.

New §141.5(t) requires licensees to cooperate during investigation of a complaint.

Amendments to §141.6 prohibit the practice of massage therapy or other massage services while partially nude.

Amendments to §141.10 require applicants for licensure to be at least 18 years of age.

Amendments to §141.11 delete the requirement that applications must be submitted by established deadlines.

Repeal of §141.12 (relating to the issuance of a temporary registration) is being proposed in accordance with House Bill 2696 of the 79th Regular Legislative Session.

Amendments to §141.13 require applicants for licensure to be at least 18 years of age and reflect that a licensee is licensed by the department.

Amendments to §141.14 delete references to the temporary registration, require an applicant to submit a new application and begin the examination process again if the applicant has not passed both the written and practical examination within one year of being approved for examination, clarify that only the videotape from the practical exam may be reviewed by the candidate. New §141.14(b) requires the applicant to pass the written examination before they are eligible to sit for the practical exam unless the applicant requires the examination in a language other than English or an interpreter is needed.

Amendments to §141.24 remove language regarding one-year approvals for continuing education providers.

New §141.32(h) and (i) will require massage therapy educational programs to pay late renewal fees to align the fee structure with standard licensing practices.

New language §141.34(j) to clarify that students may only complete 50 hours of internship before they are required to be licensed in accordance with Texas Occupations Code, §453.053(7), relating to massage schools.

Amendments to §141.37 reflect agency name change. New §141.37(a)(16)(B) requires massage therapy education programs to inform prospective students that a person is ineligible for licensure until the fifth anniversary date of a conviction for a misdemeanor involving moral turpitude or a felony.

Amendments to §141.50 require businesses that advertise or offer other massage services to be licensed.

New §141.51(i) prohibits a massage establishment from employing an individual who is not a United States citizen or legal permanent resident, employing a minor without parental consent, allowing a nude or partially nude employee to practice massage therapy or other massage services, allowing employees to engage in sexual contact, allowing employees to wear clothing that is designed to arouse or gratify a sexual desire. New §141.51(j) requires massage therapy establishments to maintain and secure client intake forms, billing records, and session notes and to make them available at the departments request. New §141.51(k) defines nude and “sexual contact.”

Amendments to §141.54 exclude the office of an occupational therapist from licensure requirements, and add an exemption for the practice of other massage services.

New §141.55(e) requires massage establishments to obtain a new license if the location of the establishment changes.

Amendments to §141.62 change board to executive commissioner to reflect that the executive commissioner adopts rules.

Amendments to §141.64 replace board with department to clarify that the department is responsible for implementing terms of final court or attorney general orders and that the department may not modify, remand, reverse, vacate, or stay a court or attorney general’s order to suspend a license for failure to pay child support.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be a decrease in revenue to the state as a result of enforcing or administering the sections as proposed. The decrease in revenue is related to the elimination of the written examination review fee. In fiscal year 2005, 11 applicants who failed the written examination elected to pay the written examination review fee of \$15.00. This

represents a decrease in revenue of \$165.00 for the first and each succeeding fiscal year that the rules will be in effect. There may be an increase in revenue that will come from massage therapy education programs that renew late. The specific increase to revenue cannot be determined because there is no way to know how many massage therapy education programs will renew late and be required to pay the additional fees. There are currently 100 licensed massage therapy education programs. Due to the issuance of two-year licenses approximately 50 education programs renew each year. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has determined that there will be fiscal implications for small businesses or micro-businesses that are required to comply with the sections as proposed. Some massage therapy education programs are small businesses or micro-businesses and they will be required to pay late renewal fees if they do not renew on time. The cost to small businesses or micro-businesses will be the amount of the late renewal fee. There are no anticipated costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of massage therapy.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Heather Muehr, Program Director, Massage Therapy Program, Professional Licensing and Certification Unit, Division for Regulatory

Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6628 or by email to heather.muehr@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments and repeal are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments and repeal affects the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

Section for Repeal

§141.12. Temporary Registration.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

Subchapter A. The Department.

§141.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Texas Occupations Code, Chapter 455 (the Act relating to the regulation of massage therapy) shall have the same meaning in this chapter as assigned in the Act.

(1) Act--Texas Occupations Code, Chapter 455 **[and Texas Revised Civil Statutes, Article 4512k]**, relating to the regulation of massage therapists, massage therapy instructors, massage therapy schools and massage establishments.

(2) - (4) (No change.)

(5) Commissioner-- The Commissioner of the Department of State Health Services.

(6) [(5)] Department-- Department of State Health Services [Texas Department of Health].

(7) [(6)] Health and hygiene--The study of recognized methods of sanitation and cleanliness including prophylaxis or disease prevention as applied to massage therapy services and current knowledge of elements of healthy life styles.

(8) [(7)] Hydrotherapy--The use of generally accepted methods of external application of water for its mechanical, thermal, or chemical effect.

(9) [(8)] Instructor--A person employed at a licensed **[registered]** massage school who instructs one or more students in any section of the course of instruction, other than Swedish massage therapy techniques or the internship.

(10) Licensee--A person or entity licensed under the Act as a massage therapist, massage school, massage therapy instructor, or massage establishment.

(11) [(9)] Massage therapy--The manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, or tub, shower, jacuzzi, sauna, steam or cabinet baths.

Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, or any derivation of those terms. Massage therapy is a health care service when the massage is for therapeutic purposes. The terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.

(12) [(10)] Massage therapy educational program--The supervised 300 hour course of instruction described in the Act, §455.156, required for licensure **[registration]** provided by a licensed **[registered]** massage school or massage therapy instructor.

(13) [(11)] Massage therapy instructor--A licensed **[registered]** massage therapist who provides to one or more students instruction approved by the department in massage therapy.

(14) [(12)] Owner--An owner is, in the case of a massage therapy educational program or establishment, an individual, a partnership and any partners, a corporation, or any other legal business entity.

(15) [(13)] Physiology--The study of the normal vital processes of the human body including the processes of cells, tissues, and organs including the contractibility of muscle tissue; coordination through the nervous system; digestion; circulatory reproduction; and secretions.

[(14) Registrant--A person or entity registered under the Act as a massage therapist, massage school, massage therapy instructor or massage establishment.]

(16) [(15)] State approved educational institution--An institution which is approved by the Texas Education Agency or which is an institution of higher education as defined in the Texas Codes Annotated, Texas Education Code, Chapter 61 or a higher education institution approved by a similar agency in another state.

(17) [(16)] Swedish gymnastics--Passive and active joint movements, nonspecific stretches, passive and active exercise, or any combination of these.

(18) [(17)] Swedish massage therapy techniques--The manipulation of soft tissue utilizing effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve stroke, and Swedish gymnastics.

§141.2. Fees.

(a) All fees are non-refundable and shall be submitted in the form of a personal check, certified check or money order made payable to the Department of State Health Services **[Texas Department of Health]**. Cash payments may be made in person only.

(b) (No change.)

(c) The fees related to the licensure **[registration]** of massage therapists are as follows:

[(1) application fee for applications filed on or before December 31, 2004 (includes temporary and initial registration)--\$53;]

(1) [(2)] application fee [for applications filed on or after January 1, 2005 (includes temporary and initial registration)]--\$106;

(2) [(3)] examination fee--to be determined by the agency approved by the department to administer the examination plus an administrative fee determined by the department at the time the applicant is scheduled for an examination;

(3) [(4)] re-examination fee--to be determined by the agency approved by the department to administer the examination plus an administrative fee determined by the department at the time the applicant is to be rescheduled for an examination;

(4) [(5)] written translation fee--the actual costs to the department of translating or having the examination translated into a foreign language, including salaries, travel expenses, and out of pocket expenses plus an administrative fee determined by the department;

(5) [(6)] practical examination review fee-- \$25;[:]

[(A) practical and written--\$40;]

[(B) practical only--\$25;]

[(C) written only--\$15;]

(6) [(7)] fee for a renewal license **[registration] issued for a one-year period--\$50;**

(7) [(8)] fee for a renewal license **[registration] issued for a two-year period--\$100;**

(8) [(9)] late renewal fees;

(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or

(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.

(d) The fees related to massage establishments are as follows:

[(1) massage establishment application and registration fee for applications filed on or before December 31, 2004--\$150;]

(1) [(2)] massage establishment application fee [for applications filed on or after January 1, 2005]--\$300;

(2) [(3)] fee for a renewal license [registration] issued for a one-year period--\$150;

(3) [(4)] fee for a renewal license [registration] issued for a two-year period--\$300;

(4) [(5)] late renewal fees;

(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or

(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.

(e) The fees related to massage therapy educational programs (massage schools and massage therapy instructors offering the 300-hour course of instruction for license [registration]) are as follows:

[(1) application and registration fee for applications filed on or before December 31, 2004 (includes inspection)--\$1,400;]

(1) [(2)] application and license [registration] fee [for applications filed on or after January 1, 2005] (includes initial inspection and annual inspection)--\$2,800;

(2) [(3)] fee for a renewal license [registration] issued for a one-year period (includes inspection)--\$1,000;

(3) [(4)] fee for a renewal license [registration] issued for a two-year period (includes annual inspections)--\$2,000;

(4) late renewal fees;

(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or

(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.

(5) [registration fee for a] change of instructional address for main campus (includes inspection)--\$375; and

[(6) application and renewal fee for an additional educational program location separate from the main campus filed on or before December 31, 2004 (includes

inspection)--\$375; and]

(6) [(7)] application and renewal fee for an additional educational program location separate from the main campus [filed on or after January 1, 2005] (includes initial inspection and annual inspection)--\$750.

(f) The fees related to massage therapy instructors are as follows:

[(1) application and registration fee for applications filed on or before December 31, 2004--\$100;]

(1) [(2)] application and licensure [registration] fee [for applications filed on or after January 1, 2005]--\$200;

(2) [(3)] fee for a renewal license [registration] issued for a one-year period--\$100;

(3) [(4)] fee for a renewal license [registration] issued for a two-year period--\$200;

(4) [(5)] late renewal fees for massage therapy instructors;

(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or

(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.

(g) The fees related to pre-approved providers for continuing education are as follows:

[(1) fee for applications submitted on or before December 31, 2004--\$100;]

(1) [(2)] application fee [for applications submitted on or after January 1, 2005]--\$200;

(2) [(3)] fee for a renewal license [registration] issued for a one-year period--\$100;

(3) [(4)] fee for a renewal license [registration] issued for a two-year period--\$200.

(h) License [**Registration certificate**] and identification card replacement fee--\$20.

(i) (No change.)

(j) (No change.)

§141.3. Processing Applications.

(a) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(1) letter of acceptance of application for massage therapist license **[registration or temporary registration]**--20 working days;

(2) (No change.)

(3) issuance of license **[registration]** renewal after receipt of documentation of all renewal requirements--10 working days; and

(4) letter of acceptance or notice of deficiency of application for massage school, massage therapy instructor, or massage establishment license **[registration]**--30 working days.

(b) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required examination has been successfully completed by the applicant. The time periods are as follows:

(1) notice **[letter]** of approval for examination--20 working days;

(2) initial letter of approval for licensure **[registration]**--30 days;

(3) letter of denial of licensure **[registration]**--30 days; and

(4) issuance of license **[registration]** renewal after receipt of documentation of all renewal requirements--10 working days.

(c) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied. Good cause for exceeding the time period is considered to exist if the number of applications for licensure **[registration]** and licensure **[registration]** renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(d) (No change.)

(e) The time periods for contested cases related to the denial of licensure **[registration]** or licensure **[registration]** renewals are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

Subchapter B. Code of Ethics.

§141.5. General Ethical Requirements.

(a) A licensee **[registrant]** shall not make deceptive, untrue, or fraudulent representations in the practice of massage or employ a trick or scheme in the practice of massage, including, but not limited to, warranty of results of such services and false claims of proficiency in any field.

(b) A licensee **[registrant]** shall not use a work area, equipment or clothing that is unclean or unsanitary.

(c) A licensee **[registrant]** shall not practice massage therapy fraudulently, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion.

(d) A licensee **[registrant]** shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(e) For each client, a licensee **[registrant]** shall keep accurate records of the dates of massage therapy services, types of massage therapy and billing information. Such records must be maintained for a minimum of two years.

(f) A licensee **[registrant]** must obtain the written consent of a parent or guardian to provide massage therapy services to a person under the age of 17.

(g) On the written request of a client, a client's guardian, or a client's parent if the client is under the age of 17, a licensee **[registrant]** shall provide a written explanation of the charges for massage therapy services previously made on a bill or statement of the client. This requirement applies even if the charges are to be paid by a third party.

(h) A licensee **[registrant]** shall provide an initial consultation to each client(s) prior to the first massage session and obtain the signature of the client on the consultation document. The consultation document shall include:

(1) the type of massage techniques the licensee **[registrant]** anticipates using during the massage therapy session;

(2) (No change.)

(3) a statement that the licensee **[registrant]** shall not engage in breast massage of female clients without the written consent of the client;

(4) a statement that draping will be used during the session, unless otherwise agreed to by both the client and the licensee **[registrant]**;

(5) a statement that if uncomfortable for any reason, the client may ask the licensee **[registrant]** to cease the massage and the licensee **[registrant]** will end the massage session; and

(6) the signature of both the client and the licensee **[registrant]**.

(i) If the client's reason for seeking massage changes at any time and any of the information in subsection (h)(1)-(4) of this section is modified, the licensee **[registrant]** must provide an updated consultation reflecting any changes and modifications to the techniques used or the parts of the client's body to be massaged.

(j) A licensee **[registrant]** shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of massage therapy or massage therapy instruction.

(k) A licensee **[registrant]** may not persistently or flagrantly overcharge or over treat a client.

(l) A licensee **[registrant]** shall not practice in an unlicensed **[unregistered]** massage establishment or massage school.

(m) A licensee **[registrant]** shall not allow an unlicensed **[unregistered]** person to engage in activity for which licensure **[registration]** is required.

(n) A licensee **[registrant]** shall not provide false information on material submitted to the department.

(o) A licensee **[registrant]** shall not interfere with a department investigation by the willful misrepresentation of facts to the department or its authorized representative, or by the use of threats, retaliation, or harassment against any person.

(p) A licensee **[registrant]** shall comply with any formal order issued by the department relating to the licensee **[registrant]**.

(q) A licensee **[registrant]** shall be subject to disciplinary action by the department if the licensee **[registrant]** is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, §56.31.

(r) A licensee **[registrant]** shall notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a licensee **[registrant]**;

(2) on a sign prominently displayed in the primary place of business of each licensee **[registrant]**;

(3) on a bill for service provided by a licensee **[registrant]** to a client or third party; or

(4) (No change.)

(s) A licensee **[registrant]** shall keep his or her licensure **[registration]** file updated by notifying the department, in writing, of changes of names, address, telephone number and employment.

(t) A licensee shall be subject to disciplinary action for failure to truthfully respond in a manner that fully discloses all information in an honest, materially responsive, and timely manner to a complaint filed with or by the department.

§141.6. Sexual Misconduct.

(a) A licensee **[registrant]** shall not engage in sexual contact during a session with a client. For the purposes of this section, sexual contact includes:

(1) - (7) (No change.)

(b) A licensee **[registrant]** shall not allow any individual, including a client, student, licensee **[registrant]**, employee, or one's self to engage in sexual contact on the premises of any massage school, massage establishment, or the licensee's **[registrant's]** own place of business.

(c) A licensee **[registrant]** shall not allow any individual, including a student, licensee **[registrant]**, employee, or one's self to practice massage therapy or provide other massage therapy services in the nude, while partially nude, or in clothing designed to arouse or gratify the sexual desire of any individual.

(d) A licensee **[registrant]** shall not perform massage therapy, whether or not for compensation, at or for a sexually oriented business.

(e) A licensee **[registrant]** shall immediately discontinue the activity or the professional relationship when a client initiates any verbal or physical contact with the licensee **[registrant]** that is intended to arouse or gratify the sexual desire of either person.

§141.7. Advertising.

(a) A person, including a massage therapy instructor, a massage school, a massage therapist, or massage establishment that is not licensed **[registered]** under the Act shall not use the word "massage" on any sign, display, or other form of advertising unless the person is expressly exempt from the license **[registration]** requirements of the Act. Under no circumstances may a sexually oriented business use the word "massage" or "bath" on any sign or other form of advertising.

(b) A licensee **[registrant]** shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) - (4) (No change.)

(5) causes confusion or misunderstanding as to the credentials, education, or licensure **[registration]** of a health care professional;

(6) - (9) (No change.)

(c) When an assumed name is used in a person's practice as a massage therapist or massage establishment, the legal name or license **[registration]** number of the massage therapist must be listed in conjunction with the assumed name. An assumed name used by a massage therapist must not be false, misleading, or deceptive.

(d) (No change.)

(e) A massage therapy educational program shall not maintain, advertise, solicit for or conduct any course of instruction intended to qualify a person for licensure **[registration]** as a massage therapist without first obtaining licensure **[registration]** from the department.

(f) (No change.)

(g) Advertisements seeking prospective students must include the full and correct name and license **[registration]** number of the massage therapy educational program.

(h) - (j) (No change.)

Subchapter C. Massage Therapists.

§141.10. Qualifications for Licensure **[Registration]** as a Massage Therapist.

(a) Each applicant for licensure **[registration]** as a massage therapist must be at least 18 years old and present evidence satisfactory to the department that the person has:

(1) successfully completed a minimum of a 300-hour supervised course of instruction in massage studies provided by a licensed **[registered]** massage therapy instructor,

licensed **[registered]** massage school, a state approved educational institution, or a combination of any of these. The 300-hour supervised course of instruction must include:

(A) - (G) (No change.)

(2) - (3) (No change.)

(b) Applicants who began massage therapy studies prior to January 1, 1992, may be eligible for licensure **[registration]** by documenting completion of a 250-hour **[250 hour]** supervised course of instruction and are not required to have completed a 50-hour **[50 hour]** internship in accordance with subsection (a)(1) of this section.

(c) - (d) (No change.)

§141.11. Application Procedures and Documentation.

(a) Unless otherwise indicated, an applicant for licensure **[registration]** as a massage therapist must submit all required information and documentation of credentials on official department forms. **[Documents must be submitted on or before the examination deadline set by the department to be eligible for an examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.]**

(b) - (c) (No change.)

(d) Applicants must provide the following information on official department forms, unless otherwise requested by the department:

(1) - (2) (No change.)

(3) a statement that the applicant, if issued a license **[registration certificate]**, shall return the license **[certificate]** and identification cards to the department upon the expiration, revocation or suspension of the license **[registration]**;

(4) a statement that the applicant understands that fees and materials submitted in the licensure **[registration]** process are nonrefundable and nonreturnable;

(5) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted a license **[any registration]** or the revocation of any licenses **[registration]** issued; and

(6) (No change.)

(e) (No change.)

(f) Applicants applying under §141.10(a)(3) of this title (relating to Qualifications for Licensure **[Registration]** as a Massage Therapist) must submit two or more of the following to the department on official department forms, if required:

(1) - (5) (No change.)

§141.13. Provisional License. **[Registration]**

(a) The department may issue a provisional license **[registration]** to an applicant for licensure **[registration]** as a massage therapist or massage therapy instructor who is at least 18 years old and is currently licensed or registered in another jurisdiction and who:

(1) - (2) (No change.)

(3) is sponsored by a person licensed **[registered]** by the department **[board]** under the Act with whom the provisional licensee **[registrant]** will practice during the time the person holds a provisional license **[certificate of registration]**.

(b) (No change.)

(c) A provisional license **[certificate of registration]** is valid until the date the department **[board]** approves or denies the provisional licensee's **[registrant's]** application for licensure **[registration]**. The department shall issue a license **[certificate of registration]**, without examination, to a person submitting the documentation set out in subsection (a) of this section.

(d) The department **[board]** must approve or deny a provisional licensee's **[registrant's]** application for licensure **[registration]** not later than the 180th day after the date the provisional license **[registration]** is issued. The department **[board]** may extend the 180-day period if the results of an examination have not been received by the department **[board]** before the end of that period.

§141.14. Examination.

(a) An **[A holder of a temporary registration or an]** applicant meeting the requirements of §141.10 of this title (relating to Qualifications for Licensure **[Registration]** as a Massage Therapist) is allowed to take the written and practical examinations **[the examination]** provided the person complies with the requirements of this section.

(b) Applicants must pass the written examination in order to be eligible to sit for the practical examination. Exceptions may be made for individuals who require an interpreter or can not take the examination in English.

(c) [(b)] The department or its designee shall send an examination approval notice to each [candidate form to an] applicant who is eligible to sit for the written or practical examination. [whose application has been approved. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.]

(d) [(c)] Approved examination candidates must complete the examination registration process and submit the examination fee by the established deadlines. [A completed examination candidate form and fee must be submitted on or before the deadline date set by the department.] Forms which are received incomplete or late may cause the applicant to miss the examination deadline.

(e) [(d)] The department shall void the application of any applicant who fails to schedule and take an examination within one year after the examination approval notice is mailed to the applicant. To be eligible for subsequent examination(s), the applicant will be required to file another application and meet requirements in effect at that time.

(f) [(e)] The examination will be conducted in the English language. Exceptions will be made when English is not the native or first language of the applicant. The written exam may be taken in a person's native language if the person notifies the department at least 60 days in advance, so that the written test can be available. The applicant will be responsible for any fee or consideration to be paid to an acceptable interpreter and/or translator whose services are necessary for the examination.

(g) [(f)] Applicants with disabilities must inform the department, in advance, of special accommodations requested for examination.

(h) [(g)] The examination shall consist of a written section and a practical section. Exam candidates must sign a statement agreeing to maintain the confidentiality of the exam.

(i) [(h)] Examinations will be held on dates and in locations to be announced by the department.

(j) [(i)] Examinations will be graded by the department or its designee. The department or its designee shall notify each examinee of the results of the examination within 30 calendar days of the date of the examination.

(k) [(j)] A person who fails the written examination or the practical examination may retake **[twice on the failed portion of the examination after]** by registering for another examination and paying another examination fee. The department will void the application of a person who fails to pass both the written and practical examination within one year of the initial approval for examination. The person must submit a new application and successfully pass both examinations, even if the written examination was previously passed, before being eligible for licensure. [All retakes must be completed no later than two years after the initial date of examination eligibility or the person's application will be voided.]

(l) [(k)] No refunds will be made to examination candidates who fail to appear for an examination.

(m) [(l)] Each applicant taking the practical **[portion of the]** examination may serve as a model for another applicant taking the practical **[portion of the]** examination on the same day.

Each applicant shall complete a model eligibility form provided by the department at the examination site.

(n) ~~[(m)]~~ Each applicant who fails the practical examination may request, in writing and within 21 days from the date of the notification of failure, an examination review. All requests for a review shall be accompanied by the fee set out in §141.2 of this title (relating to Fees).

(1) ~~The~~ **[For the practical examination, the]** applicant may review his or her videotape **[video tape and examination grade sheets]**. A skill examiner may be requested to review **[or regrade]** the skill demonstration videotape **[video tape]**.

(2) All reviews are subject to department security requirements.

(3) Textbooks and other references may not be used and persons other than the applicant and department representatives may not be present during the review.

(4) The department will set a date and hour within a reasonable time when the examination will be available for review.

§141.15. Massage Therapy Licenses. **[Therapist Registration Certificates]**

(a) The department will send each applicant whose application has been approved and who has passed the written and practical examination, a license **[registration certificate]** and identification card containing a license **[registration]** number. Licenses **[Registration certificates]** and identification cards remain the property of the department and must be surrendered to the department on demand.

(b) A license **[certificate]** must be displayed in an appropriate and public manner in the primary office or place of employment of the licensee **[registrant]**. In the absence of a primary office or place of employment, the licensee **[registrant]** shall carry a current identification card.

(c) Neither the licensee **[registrant]** nor anyone else shall display a photocopy of a license **[certificate]** or carry a photocopy of an identification card in lieu of the original document.

(d) Neither the licensee **[registrant]** nor anyone else shall make any alteration on a license **[certificate]** or identification card issued by the department.

(e) The department will replace a lost, damaged, or destroyed license **[certificate, temporary registration certificate,]** or identification card upon written request from a licensee **[registrant]** and payment of the appropriate replacement fee. The request shall include a statement detailing the loss or destruction of the original license **[certificate]** or identification card, or be accompanied by the damaged license **[certificate]** or card.

(f) Licenses [**Certificates**] and cards that may have not been received by a licensee [**registrant**] may be replaced at no charge if the licensee [**registrant**] notifies the department in writing and within 30 days of the date the license [**certificate**] or card was issued.

§141.16. Massage Therapist License [**Registration**] Renewal.

(a) When issued, an initial license [**registration**] is valid until the last day of the licensee's [**registrant's**] birth month in the current or following year, as determined by the department, and must be renewed on or before the expiration date. Renewal licenses [**registrations**] will be issued for a one or two-year period, as determined by the department, and expire on the last day of the licensee's [**registrants**] birth month. The expiration date is noted on each license [**registration certificate**].

(b) Each licensee [**registrant**] is responsible for renewing the license [**registration**] before the expiration date and shall not be excused from paying late renewal fees. Failure to receive notification from the department prior to the expiration date of the license [**registration**] will not excuse failure to file for renewal or late renewal.

(c) At least 30 days prior to the expiration date, the department will send a notice to each licensee [**registrant**] at the licensee's [**registrant's**] last known address according to the records of the department. The notice shall include the expiration date of the license [**registration**] and the amount of the renewal fee.

(d) The department may request specific information for renewal including the licensee's [**registrant's**] preferred mailing address, primary employment address and telephone number, category of employment, all names or titles under which the licensee [**registrant**] engages in the practice of massage therapy, and a statement of all misdemeanor and felony convictions or offenses for which deferred adjudication was received or for which a plea of nolo contendere or guilty was entered.

(e) For renewals occurring after January 1, 2002, licensees [**registrants**] shall report continuing education required for renewal in accordance with Subchapter D of this chapter, (relating to Continuing Education and Documentation).

(f) A licensee [**registrant**] may renew by mailing the renewal fee and required documentation to the department or by telephonic or electronic methods on or before the expiration date. The postmark date or the date of electronic renewal shall be considered in determining whether any late fees apply.

(g) The department shall not renew a license [**registration**] until it receives the fee and required documentation for renewal or notice of telephonic or electronic renewal.

(h) A person whose license [**registration**] has expired for 90 days or less may renew by paying a fee that is equal to one and one-half times the normally required renewal fee.

(i) A person whose license **[registration]** has expired for more than 90 days but less than one year may renew by paying a fee that is equal to two times the normally required renewal fee.

(j) A person whose license **[registration]** has expired for more than one year may not renew. The person may obtain a new license **[registration]** by complying with the then current requirements and procedures for obtaining a license **[registration]**, including the examination.

(k) A person who was licensed **[registered]** in this state, moved to another state, and is currently registered or licensed as a massage therapist and has been in the practice of massage therapy in the other state for the two years preceding the date of application may obtain a license **[register]** without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for licensure **[registration]**.

(l) A person whose license **[registration]** has expired may not engage in the activities of a massage therapist and may not hold himself or herself out as a massage therapist, imply that he or she has the title of "licensed **[registered]** massage therapist" or "massage therapist", or use "RMT", "LMT", or "MT" or any facsimile of those titles in any manner.

(m) The department shall deny renewal of the license **[registration]** of a licensee **[registrant]** if renewal is prohibited by the Education Code, §57.491 (relating to Default of Student Loans).

(n) The department shall not renew a license **[registration]** if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support).

§141.17. Active Military Duty.

(a) If a licensee **[registrant]** fails to timely renew his or her license **[registration]** on or after August 1, 1990, because the licensee **[registrant]** is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee **[registrant]** may renew the license **[registration]** pursuant to this section.

(1) Renewal of the license **[registration]** may be requested by the licensee **[registrant]**, the licensee's **[registrant's]** spouse, or an individual having power of attorney from the licensee **[registrant]**. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license **[registration]**.

(3) A copy of the official orders or other official military documentation showing that the licensee **[registrant]** is or was on active duty serving outside the state of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee **[registrant]** shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(b) A licensee **[registrant]** renewing under this section shall pay the applicable renewal fee, but not a late renewal fee.

Subchapter D. Continuing Education Requirements and Documentation.

§141.20. Hour Requirements for Continuing Education.

(a) Licensees **[Registrants]** must successfully complete at least 6 hours of acceptable continuing education to renew a one-year license **[registration]**. Licensees **[Registrants]** must successfully complete at least 12 hours of acceptable continuing education to renew a two-year license **[registration]**.

(b) - (c) (No change.)

§141.21. Acceptable Continuing Education.

(a) Acceptable continuing education includes attendance at and completion of department approved or recognized programs (other than the 300 hour course of instruction required for licensure **[registration]**), institutes, seminars, workshops, state or national conferences, advanced course work, or college and university academic courses that are:

(1) - (3) (No change.)

(b) Continuing education approved or recognized by the department must be developed and presented by qualified persons.

(1) - (2) (No change.)

(3) Out-of-state instructors or presenters offering continuing education in Texas on massage therapy techniques or involving the manipulation of soft tissue must be in compliance with any licensure, registration or certification requirements for massage therapists and massage therapy instructors in the instructor or presenter's home state or be licensed to practice medicine, occupational therapy, chiropractic, athletic training, physical therapy, or nursing. If the instructor or presenter's home state does not have licensure, registration or certification requirements for massage therapists and massage therapy instructors, the instructor or presenter must provide documentation of education or practical experience specific to the continuing education being offered.

§141.24. Pre-approved Continuing Education Providers.

(a) Continuing education providers may apply for provider pre-approval on department forms. Approval of provider applications will be determined by review of the application and

determination of applicants' ability to comply with department rules. **[Approved applications filed on or before December 31, 2004, are effective for twelve months from the date of approval.]** Approved applications **[filed on or after January 1, 2005,]** are effective for two years from the date of approval.

(b) - (d) (No change.)

(e) Continuing education providers must renew the approval **[registration]** prior to the expiration date. Renewed approvals **[Renewal registrations]** will be issued for a one or two-year period, as determined by the department.

§141.25. Reporting Continuing Education.

(a) The department will monitor a licensee's **[registrant's]** compliance with continuing education requirements by the use of a random audit system. Licensees **[Registrants]** selected for audit will receive notification along with the renewal notice. Supporting documentation of participation in continuing education activities are not to be submitted unless a written audit notice is received informing the licensee **[registrant]** that he or she has been randomly selected for a document audit.

(b) (No change.)

(c) Licensees **[Registrants]** who receive an audit form with the renewal notice shall submit all appropriate documentation to substantiate compliance with the department's continuing education requirements.

(d) Licensees **[Registrants]** are responsible for maintaining continuing education records for a period of three years.

Subchapter E. Massage Schools and Massage Therapy Instructors.

§141.26. General Provisions and Inspections.

(a) A person or entity who provides at a minimum the course of instruction required for licensure **[registration]** to one or more students constitutes a massage therapy educational program and must obtain licensure **[registration]** as a massage school or as a massage therapy instructor providing the training solely through an independent training program.

(b) - (e) (No change.)

§141.27. Application Procedures and Documentation.

(a) - (d) (No change.)

(e) The license **[registration certificate]** must be displayed in an appropriate and public manner at the location of the educational program.

(f) The effective date of the license **[registration]** shall be the date the license **[certificate of registration]** is issued

§141.29. Massage Therapy Instructors.

(a) A massage therapy instructor shall instruct the 125 hours of Swedish massage therapy and the internship portion of the required course of instruction. To qualify for licensure **[registration]** as a massage therapy instructor, a person shall:

(1) be a licensed **[registered]** massage therapist (not a temporary license **[registration]**);

(2) (No change.)

(3) submit a statement of assurance that the licensee **[registrant]** has been engaged in the practice of massage therapy for at least one-year and has conducted 250 hours of hands-on experience (does not include internship hours). Hours accumulated while holding a provisional license **[registration]** can be applied to the requirements of this paragraph; and

(4) complete a 30-hour course on teaching adult learners or demonstrate competency in teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners, a continuing education course in teaching adult learners, or an advanced program approved by the department in teaching the course of instruction. Demonstrated competency means teaching adult learners varied subjects in a formal educational setting, including the development of lesson plans and assessment methods, which may be verified by a letter of reference. Effective January 1, 2002, applicants for licensure **[registration]** as a massage therapy instructor must complete the 30-hour course on teaching adult learners.

(b) (No change.)

(c) Each massage therapy instructor and instructor employed by a licensed **[registered]** massage school shall be evaluated by the school annually. A report of the evaluation shall be available for review by the department.

(d) Licensed **[Registered]** massage schools shall ensure continuity of instruction through the reasonable retention of qualified instructors.

§141.30. Financial Stability.

(a) Applicants for initial licensure **[registration]** of a massage therapy educational program shall furnish the department with complete and correct financial statements or documents, sufficient to demonstrate the program is financially stable and capable of fulfilling its commitments for training.

(1) (No change.)

(2) Additional documents required for initial licensure **[registration]** include:

(A) - (C) (No change.)

(b) - (d) (No change.)

(e) Financial statements for the most recent fiscal year are required at the time of renewal in accordance with §141.32 of this title (relating to License **[Registration]** Renewal).

§141.31. Change of Ownership.

(a) The license **[registration]** of a massage therapy educational program may not be sold or transferred to another person or owner.

(b) (No change.)

(c) The department may require submission of a complete application for licensure **[registration]** if:

(1) - (2) (No change.)

(d) The department may require a partial application for licensure **[registration]** if the department reasonably believes the change in ownership will not significantly affect the educational program's continued ability to meet the criteria for approval.

(e) Prior to a change in ownership of a massage therapy educational program, the purchaser shall furnish the department a balance sheet meeting the requirements for initial licensure **[registration]** outlined in §141.30(a) of this title (relating to Financial Stability), excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the department to establish financial stability.

(f) (No change.)

(g) The department may issue a new license **[registration]**, resulting from a change of ownership, without conducting an inspection if an inspection of the facility has been conducted within the previous year and if the new owner verifies that no changes will be made to existing facilities.

§141.32. License **[Registration]** Renewal.

(a) When issued, the license **[registration]** of a massage therapy educational program is valid for a one or two-year period, as determined by the department, beginning on the date of issuance of the initial license **[registration]**. A licensee **[registrant]** must renew the license **[registration]** prior to the expiration of the license **[registration]**.

(b) The expiration date of a license **[registration]** shall be the last day of the month in which the license **[registration]** was originally issued.

(c) A complete application for renewal of a license **[registration]** shall consist of:

(1) - (4) (No change.)

(d) At least 30 days prior to the license **[registration]** expiration date, the department shall send a notice of the expiration date and the amount of the renewal fee due. The notice will be mailed to the address in the department's records. Each massage therapy educational program must complete and return the license **[registration]** renewal form to the department with the required renewal fee.

(e) The **[registration]** renewal forms for massage therapy educational programs shall require the address, the names of the owner/operator of the educational program, a statement of all misdemeanor and felony offenses for which the licensee **[registrant]** or owner or operator have been convicted, entered a plea of nolo contendere or guilty, or received deferred adjudication.

(f) A massage therapy educational program has renewed the license **[registration]** when it has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the license **[registration]**. The postmark date shall be considered the date of mailing. Massage therapy educational programs should allow three to four weeks for the department to receive the license **[registration]** renewal fees and documentation, and print the certificate.

(g) The department shall issue a **[registration]** renewal license **[certificate]** to a massage therapy educational program once all requirements for renewal are met.

(h) A massage therapy educational program whose license has been expired for 90 days or less may renew by submitting all required documentation and paying a fee that is equal to one and one-half times the normally required renewal fee.

(i) A massage therapy educational program whose license has been expired for more than 90 days but less than one year may renew by submitting all required documentation and paying a fee that is equal to two times the normally required renewal fee.

(j) [(h) A massage therapy educational program whose registration has expired for not more than one year may renew the registration by submitting to the department the renewal form and the fee.] A massage therapy educational program that operates **[continues to operate]** with an expired license **[registration]** may be subject to disciplinary action. Course hours taught during the time the license **[registration]** is expired will not apply toward the 300-hour **[300 hour]** course of instruction. The postmark date shall be considered the date of mailing.

(k) [(i)] A massage therapy educational program may not renew a license that has been expired for more than one year [whose registration has expired for more than one year from the expiration date may not renew the registration].

§141.33. Locations.

(a) A license **[certificate of registration]** shall be issued for each approved instructional location(s). Instruction shall not be provided at an additional location until the department has issued a license **[certificate of registration]** for the additional location.

(b) (No change.)

(c) A request for licensure **[registration]** of an additional location shall include the appropriate fee and the following documents:

(1) - (4) (No change.)

(d) - (f) (No change.)

§141.34. Curriculum and Internship for the Basic Course of Instruction.

(a) - (i) (No change.)

(j) The department does not approve more than 50 internship hours. Individuals who have completed the required 300-hour supervised course of instruction, including the 50-hour internship are eligible for examination and licensure and are no longer considered to be students. For the purposes of Texas Occupations Code §455.053(7), 50 hours is the maximum number of hours a student can accumulate in an internship before the student is required to be licensed.

§141.36. Admission Requirements.

(a) - (b) (No change.)

(c) Each massage therapy educational program must maintain a written record of the previous education and training of a student which meets any portion of the course of instruction required for licensure **[registration]**. Official transcripts and documentation of course work obtained at colleges, universities or out of state institutions must be placed in the student's file along with a copy of the department's written evaluation.

(d) A massage therapy educational program may not require a student to take subjects the student has already completed and which meet the requirements for licensure **[registration]**.

§141.37. Enrollment Procedures.

(a) Prior to enrollment, each massage therapy educational program shall provide each prospective student copies of the following:

(1) - (12) (No change.)

(13) a notice that clearly states the number of course hours which must be successfully completed before a student can be licensed **[register]** as a massage therapist under this chapter;

(14) - (15) (No change.)

(16) a statement that the Act sets out that a person is ineligible for licensure **[registration]**:

(A) if the person has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication to crimes or offenses involving prostitution or another sexual offense; **[or]**

(B) until the fifth anniversary of the date of a conviction for a misdemeanor involving moral turpitude or a felony; or

(C) [(B)] until the fifth anniversary of the date of a conviction of a violation of the Act.

(b) (No change.)

(c) Each massage therapy educational program shall use an acknowledgment form approved by the department to verify the prospective student's receipt of the information required in subsection (a) of this section. A signed copy of the form shall be given to the prospective student. The form shall include the following or similar statements.

(1) (No change.)

(2) "I further realize that complaints may be made to the massage therapy educational program and the Texas Department of State Health Services, Massage Therapy Licensing Program **[Texas Department of Health, Massage Therapy Registration Program]**, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6616."

(3) (No change.)

(d) - (e) (No change.)

§141.40. Cancellation and Refund Policy.

(a) - (e) (No change.)

(f) The department may take disciplinary action against the license **[registration]** of a massage therapy educational program for a violation of this section; however, the department has no authority to recover a refund on behalf of a student.

Subchapter F. Massage Establishments.

§141.50. Massage Establishment Application Procedures and Licensure **[Registration]**.

(a) Unless otherwise exempt under the Act or §141.54 of this title (relating to Exemptions), a place of business that advertises massage therapy or offers massage therapy or other massage services **[as a service]** must be licensed by **[register with]** the department as provided by this section.

(b) A sexually oriented business may not obtain a license from **[register with]** the department or operate as a massage establishment.

(c) An applicant must file an application and license **[a registration]** fee with the department. The application shall contain:

(1) - (10) (No change.)

§141.51. General Requirements for Massage Establishments.

(a) A massage establishment shall employ only licensed **[registered]** massage therapists to perform massage therapy or other massage services.

(b) No massage establishment shall be operated until the department has approved and licensed **[registered]** the establishment.

(c) (No change.)

(d) A massage establishment must display the license **[registration certificate]** along with a current year validation card in a prominent location in the establishment where it is available for inspection by the public.

(e) A license **[registration certificate]** issued by the department is the property of the department and must be surrendered on demand by the department.

(f) - (h) (No change.)

(i) A massage establishment may not:

(1) employ an individual who is not a United States citizen or a legal permanent resident with a valid work permit;

(2) employ a minor unless the minor's parent or legal guardian authorizes in writing the minor's employment by the establishment;

(3) allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(4) allow any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment; or

(5) allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual.

(j) A massage establishment shall:

(1) properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records; and

(2) make available to the department on request the information kept as provided by paragraph (1) of this subsection.

(k) For purposes of this section:

(1) "Nude" means a person who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.

(2) "Sexual contact" includes:

(A) any touching of any part of the genitalia or anus;

(B) any touching of the breasts of a female without the written consent of the female;

(C) any offer or agreement to engage in any activity described in subparagraph (A) or (B) of this paragraph;

(D) kissing without the consent of both persons;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotions of prostitution as described in Penal Code, chapters 21, 22, and 43, or any offer or agreement to engage in such activities;

(F) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments about or to a client, including sexual comments about a person's body.

§141.53. Massage Establishment Renewal.

(a) When issued, a massage establishment license **[registration]** is valid for a one or two-year period, as determined by the department, beginning on the date of issuance of the initial license **[registration]** and must be renewed prior to the expiration date.

(b) The renewal date of a license **[registration]** shall be the last day of the month in which the license **[registration]** was originally issued.

(c) At least 30 days prior to the expiration date of the massage establishment's license **[registration]**, the department shall send notice to the massage establishment, including a renewal form, of the expiration date of the license **[registration]** and the amount of the renewal fee due.

(d) The license **[registration]** renewal form shall contain information concerning changes in address or ownership or operators and information regarding conviction, pleas of nolo contendere, or guilty, or receipt of deferred adjudication for crimes or offenses by owners or operators.

(e) A massage establishment has renewed the license **[registration]** when the licensee **[registrant]** has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the license **[registration]**. The postmark date shall be considered the date of mailing.

(f) The department shall issue a renewal license **[certificate]** to a massage establishment that has met all requirements for renewal.

§141.54. Exemptions.

(a) The following establishments are specifically exempt from the provisions of the Texas Occupations Code, Chapter 455 (the Act), regulating massage establishments:

(1) an establishment that holds a license, permit, certificate, or other credential issued by the state under another law, and that offers or performs massage therapy, or other massage services, under the scope of that credential;

(2) a licensed **[registered]** massage therapist who practices as a solo practitioner in that therapist's legal name or uses an assumed name if the person's legal name or massage

therapy license **[registration]** number is used in any advertisement or presentation of the assumed name;

(3) - (6) (No change.)

(7) the office of a physician, chiropractor, occupational therapist, physical therapist, or member of another similarly licensed or regulated profession as determined by the department if the professional is practicing within the scope of his or her license. This exemption applies to a professional who uses a licensed **[registered]** massage therapist to practice massage therapy or other massage services in the professional's office or where the professional has authority to delegate tasks under the statutory authority for that professional;

(8) (No change.)

(9) an establishment which is operational for a period of time of no more than 24 hours in a calendar year and in which the provision of massage therapy or other massage services is incidental to the primary athletic, fund raising, or other purpose of the event sponsored by the establishment:

(10) - (12) (No change.)

(b) An establishment may request an exemption from the licensure **[registration]** requirements of this section where it can show that the advertising or provision of massage therapy or other massage services is incidental to the person's primary enterprise.

(c) (No change.)

§141.55. Change of Ownership and Control or Location.

(a) No massage establishment license **[registration]** shall be transferred or sold to another person or owner. The new owner of a massage establishment must apply for a license **[registration]** as a new applicant. A massage establishment may not operate under a new owner until a massage establishment license **[registration]** is issued by the department to the new owner. A license **[registration]** issued under this section is not transferable.

(b) - (d) (No change.)

(e) No massage establishment license shall be transferred to another location. If the location of an establishment changes, a new application for licensure must be submitted and approved before the establishment may provide massage therapy or other massage therapy services.

Subchapter G. Complaints, Violations and Subsequent Disciplinary Actions.

§141.60. Filing Complaints.

(a) (No change.)

(b) A person wishing to file a complaint against a massage therapist, massage school, massage therapy instructor, massage establishment, or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the office of the massage therapy licensing **[registration]** program.

(c) - (d) (No change.)

§141.61. Investigation of Complaints.

(a) - (d) (No change.)

(e) If the department determines that there are insufficient grounds to support the complaint, the department shall dismiss the complaint and give written notice of the dismissal to the licensee **[registrant]** or person against whom the complaint has been filed and the complainant.

(f) (No change.)

(g) If the department determines that there are sufficient grounds to support the complaint, the department may propose to deny, suspend, revoke, or refuse to renew a license **[registration]**, reprimand a licensee **[registrant]** or impose an administrative penalty.

§141.62. Grounds for **[Registration]** Denial of License or Disciplinary Action.

(a) The department may refuse to issue a license **[certificate of registration]** to a person, suspend or revoke the license **[certificate of registration]** of a person, or place a person licensed **[registered]** under the Act on probation if the person:

(1) obtains a license **[certificate of registration]** by fraud, misrepresentation, or concealment of material facts;

(2) sells, barter, or offers to sell or barter a license **[certificate of registration]**;

(3) violates a rule adopted by the executive commissioner **[board]**;

(4) engages in unprofessional conduct as defined by executive commissioner **[board]** rule that endangers or is likely to endanger the health, welfare, or safety of the public;

(5) - (6) (No change.)

(b) The department shall revoke the license **[certificate of registration]** of a person if:

(1) - (2) (No change.)

(c) The department shall revoke the license **[certificate of registration]** of a person licensed **[registered]** as a massage school or massage establishment if the department determines that:

(1) - (2) (No change.)

(d) If the department finds a person has violated the Act or rules adopted under the Act or any other law or rule relating to the practice of massage therapy in Texas, the following sanctions and penalties apply:

(1) denial of the persons' application for licensure **[registration]**;

(2) (No change.)

(3) limitation or restriction of the licensee's **[registrant's]** practice for a specified time;

(4) suspension of the license **[registrant's registration]**;

(5) revocation of the license **[registrant's registration]**;

(6) required participation by the licensee **[registrant]** in one or more education programs;

(7) - (8) (No change.)

(9) acceptance of the voluntary surrender of a massage therapist's license **[registration]**; or

(10) (No change.)

§141.64. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court order or attorney general's order suspending a license **[registration]** due to failure to pay child support, the department shall immediately determine if a license **[registration]** has been issued to the obligator named on the order, and, if a license **[registration]** has been issued:

(1) record the suspension of the license **[registration]** in the department's records;

(2) (No change.)

(3) demand surrender of the suspended license **[registration]**.

(b) The department **[board]** shall implement the terms of the final court or attorney general's order suspending a license **[registration]** without additional review or hearing. The

department will provide notice as appropriate to the licensee **[registrant]** or to others concerned with the license **[registration]**.

(c) The department **[board]** may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license **[registration]** issued under the Family Code, Chapter 232, as added by Acts 1995, 74th Legislature, Chapter 751, §85 and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license **[registration]** is not entitled to a refund for any fee paid to the department **[board]**.

(e) If a suspension overlaps a license **[registration]** renewal period, an individual with a license **[registration]** suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license **[registration]** will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the title(s) massage therapist, massage therapy instructor, massage school, or massage establishment or to engage in any activity for which a license **[registration]** is required after the issuance of a court or attorney general's order suspending the license **[registration]** is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license **[registration]** or while a license **[registration]** is suspended as any other license **[registration]** holder of the department **[board]**.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license **[registration]**, the department shall promptly issue the affected license **[registration]** to the individual if the individual is otherwise qualified for a license **[the registration]**.

(h) The individual must pay a reinstatement fee set out at §141.2 of this title (relating to Fees) prior to issuance of the license **[registration]** under subsection (g) of this section.

§141.65. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee **[registrant]** or an applicant for licensure **[registration]** may be made through an informal settlement conference held to determine whether an agreed settlement order may be secured.

(b) - (c) (No change.)

(d) The licensee **[registrant]**, the licensee's **[registrant's]** attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(e) - (f) (No change.)

§141.66. Licensing **[Registration]** of Persons with Criminal Background.

(a) Notwithstanding actions set out in §141.62(b) and (c) of this title (relating to Grounds for **[Registration]** Denial of License or Disciplinary Action **[Actions]**), the department may suspend or revoke a license **[registration]**, disqualify a person from receiving a license **[registration]** or deny to a person the opportunity to be examined for a license because of the person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a massage therapist, massage therapy instructor, massage school, or massage establishment.

(b) In considering whether a criminal conviction directly relates to the occupation of a massage therapist, the department shall consider:

(1) (No change.)

(2) the relationship of the crime to the purposes for requiring a license **[registration]**. The following felonies and misdemeanors relate to the license **[registration]** of a massage therapist, massage therapy instructor, massage school or massage establishment because these criminal offenses indicate an unwillingness or an inability to be able to perform as a massage therapist:

(A) the misdemeanor of knowingly or intentionally acting as a massage therapist without a license **[registration]** issued under the Act;

(B) - (C) (No change.)

(3) the extent to which a license **[registration]** might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) (No change.)